

**From:** Rik Gran  
**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

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Sent Wednesday, January 23, 2002 around 1:00 pm PST via electronic mail.  
For public comment period for the Microsoft Anti-trust Settlement

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I am writing with comments on the proposed Microsoft settlement. I am concerned that the settlement reached by Microsoft and the Department of Justice is neither a sufficient punishment for the illegal practices uncovered in trial, nor adequate compensation to the victims of those practices such as myself, nor does it provide a good remedy that will prevent further illegal actions by Microsoft. I am sure that the public comments will generate many different views on the proposed settlement and possible remedies. I will confine my comments here mostly to things that have impacted me personally. Looking at how I use computers, I can see the explicit negative effects that Microsoft's illegally maintained monopoly has had on my work.

I have two points I would like to make. First, the monopoly that Microsoft has built and maintained through illegal actions has had direct, and negative effects on my work. Since I am unable to personally recover damages from those ill effects, I expect that the courts will act very strongly to punish Microsoft, and to aggressively find ways to prevent further damage. The second point is that any agreement that allows Microsoft to continue with the practices it has used over the last ten years will likely seriously affect and delay innovation in software development in the future, as it has in the past decade.

Section one: The effects on my work

I work as a physics researcher doing experimental high energy physics. Currently, I am a graduate student at the University of Minnesota. My research is supported by a Department of Energy grant, and my studies

are partly supported by the State of Minnesota. In the course of my work I do a lot of computer programming for my data analysis, and also use the computer to write my thesis.

Practically none of the work I do involves any product designed by Microsoft. Almost all the programming I do and applications I use are done on one of several flavors of UNIX (Compaq's Digital Unix and GNU/Linux). By itself, this is not very interesting. A different, non-Microsoft Windows, system happens to be appropriate for my work. But Microsoft's illegally maintained monopoly on the Windows and Office market has prevented some applications that should have been available to me on UNIX systems from being available. By this, I don't mean "should" in principle, but several companies have made efforts to produce software that runs on multiple platforms, and have failed.

One primary example is Microsoft Office, the dominant office suite. For writing a Ph.D. thesis or doing serious numerical calculations, MS Office is an inappropriate choice. But for simple letters, and for small spreadsheet calculations, these are excellent tools. We are all aware of this, practically everyone who uses a computer has used a word processor or spreadsheet. Microsoft used to have several competitors in this category, and over the last 10 years all but two seemed to have died away. Of those, one (Corel's WordPerfect) made an effort to provide their product for Unix machines. Only recently have a couple new products appeared which might soon fill this gap. And these are products that have been standard on Windows and Macintosh machines for over ten years. There is no technical reason why it has taken so long, it is simply because the companies' inability to overcome Microsoft's monopoly has prevented them from extending their product line to where I work. The cost to me is lost time, the inability to use documents from people who use Microsoft Office, and the need to purchase a different, separate computer to run these programs.

To further this example, my wife also works in scientific research. She has worked on Unix machines and with other non-Microsoft products before, though not as extensively or as totally as I do. When a federal grant gave her enough money to upgrade the computer she uses for daily work, she chose to get one with Windows installed, even though she will still require a different computer for other tasks. The reason is because she felt she needed immediate access to Word and Excel, even though these items are only half of her work. Again, these are products that the computer industry would almost certainly have provided if it hadn't been for Microsoft's illegal practices.

My point: if Microsoft had not illegally maintained its monopoly, these common, ubiquitous computing products would have been available for this other, non-Microsoft operating system before now, and one or more companies would be still thriving businesses and good employers

because they offered it for Unix or other operating systems. My work would be faster, less expensive, and more effective, and it would have cost less to the Department of Energy and the State of Minnesota, as well as to me personally: thousands of dollars and thousands of hours for just one worker.

Example number two. For many years Microsoft has illegally prevented computer hardware makers from installing an alternate operating system on the hardware if they had an OEM agreement with Microsoft. The main publicly known example of this is BeOS, though I don't think the DoJ formally investigated this prior to its anti-trust suit, and judging by the settlement, they are probably not investigating this now. There is no technical reason why two operating systems could not be present on one machine; indeed, in the past four years several alternate OS's such as Sun's SPARC, GNU/Linux, and the late BeOS appeared and run on the same hardware that Windows uses. If computer manufacturers had been allowed to install one or more of these along with Windows, a wider group of people might have tried and used them, more useful programs might be available for them. If one or more of them offered important benefits that Windows didn't offer, they likely would have attracted a wide following, at least among users who would benefit. In my case, the GNU/Linux system is very similar to the Unix systems that I had been using all along for my research.

My point: if Microsoft had not illegally maintained its monopoly, these alternative ways of using a computer might have been more easily available to a wider group of users. Those alternatives that were actually better than Windows, at least for some uses, would be widely available today. The jungle of computer operating systems and applications and uses would be much more diverse, much richer than it is today. Furthermore, software makers would develop programs, applications, and tools in such a way that they run on more than one type of computer or operating system.

## Section two: The effect on the software industry as a whole

I would like to reiterate and extend this last point, with one important conclusion.

In the past couple years, several alternatives to Microsoft Windows and Microsoft Office and other web browsing and multimedia applications have appeared and are challenging Microsoft in its primary market. Some of these products appeared before Microsoft made one of their own, while some came later. Some offer the same functionality while some offer more. In a marketplace free from an abusive monopoly, these products would compete on their own merits and on their ability to interact well with other programs. In the case of

an abusive monopolist, they are denied equal access to the consumers and to information to make them interact with other programs, in particular they can not enter the market of the monopolist.

It is very telling that the most successful path to competing with Microsoft has come from the ``Open Source" community. Products such as GNU/Linux, Sun's StarOffice, the Apache webserver, Samba, and several initiatives by IBM are all developed in a not for profit way. These individuals and companies are in some cases are hoping for an indirect profit by selling hardware, or service, or something else, but these basic foundations are available for free or for very low cost. This strategy is working, so far, because Microsoft uses illegal monetary incentives to suppress competition, and these products are substantially immune to those efforts. Had Microsoft simply been an accidental or legal monopoly, it would have a wider variety of successful competitors.

Apparently, the most successful way of competing with an abusive monopolist is to offer products that are immune to the illegal financial-based actions of that monopolist. In effect, the competing products must be nearly free to customers. The fact that we see exactly this kind of competition, and the fact that we are seeing it from companies that are otherwise very profit-oriented (such as Sun and IBM) strongly suggests that Microsoft's illegal monopoly has had a substantial and ongoing effect on the software business, beyond what an ordinary monopoly would have.

The field of computers, software, and information technology is rapidly changing. There are new ideas appearing all the time, and older ideas and programs evolve and improve. If allowed to flourish, many of these new ideas will be commonplace in just a few years. As indicated here, and in the case presented by the DoJ in the anti-trust trial, and through many other examples, Microsoft has acted illegally to prevent individuals and companies from competing against its own products, and today's computing existence is poorer because of it.

If the proposed settlement is not made stronger, or if a much stronger remedy is not put into place, then only one group of individuals and companies will be able to compete: those that are able to offer their products substantially for free. This seems an unfair choice, because it limits software production to huge companies with other non-software products, or to individuals who have absolutely no motivation for profit. While both these groups are wonderful in themselves, the bulk of innovation in American business has come from individuals and companies in between: small start-ups, people who start a company out of their garage or basement, medium sized companies who can quickly respond to the changing needs of a small, select market. The result will be unnecessary lost time and greater expense for people who use software to accomplish real things, like

scientific research, running a business, searching for information, and everything else that we use computers for.

### Section three: Changes to the settlement and other possible remedies

The strongest possible remedy, of course, is one that would dissolve Microsoft and its assets. Presumably, their cash could go to the government and be put into education or something to help the next generation of software developers. Microsoft's program code could then be put into the public domain, and different companies can compete to offer improvements to it, or take things from it for use in their own products, thus distributing it to all takers. This probably would cause a little turmoil, but would in the long term (and short term, remember how quick innovation in computers can be) be very good for everybody. Even a lesser remedy of breaking apart the company into separate units does not seem unreasonable, if it is well considered. But assuming that these very strong remedies are deemed too much, here are ways of improving the proposed settlement instead.

The proposed settlement is inadequate on several counts. The remedy should include a large monetary penalty, on the order of the billions of dollars companies and individuals have lost trying to compete against Microsoft's unfair practices, or the billions of dollars individuals have lost in productivity because the market could not accomodate their needs efficently. This amount must also be this large, because if it is not a substantial portion of Microsoft's tens of billions of dollars of illegally gained cash reserves, then it is not really a punishment, nor does it deter other potential abusive monopolies (or Microsoft itself) from further illegal activities. At the very least, the federal governemnt itself is owed much of this money, as in my case, a Department of Energy researcher. I estimate several thousands of dollars in computer equipment and time could have been spent on other things in my case alone. Whether a monetary penalty can also be extracted for the benefit of individuals and companies that have also suffered, and how that benefit should be redistributed to them, should also be more fully explored.

The remedy needs to include an independent group to monitor Microsoft to make sure that their illegal activities do not continue, and possibly to investigate all the forms that these activities took. This group needs to have the influence and power to immediately act if they uncover problems, not just a powerless series of recommendations. Because of the enormous pace of software innovation, a delay of six months in enforcement is uncomfortably long, a delay of more than a year is unacceptable. Very strong powers should be explicitly granted to such a committee.

The ideas in the settlement about opening up API's and pieces of code

to allow other programs to work correctly with Microsoft's programs is a good one, but someone needs to carefully look for and close loopholes in the agreement (or make sure that a different remedy does not have such loopholes) that might permit Microsoft from not fully complying. In light of their illegal practices, no aspect of how their products interface with other programs or a users data, should be hidden from any programmer or potential competitor, whether they are part of a for-profit company, or an open source developer. There must be no exceptions, either for what information is available or who gets it. As written, the settlement includes many unnecessary or dangerous exclusions. In principle, this is a purely punitive measure; an ordinary company would be allowed to choose what parts of the inner workings and interfaces of its products should be available to collaborators or competitors. Historically, many have chosen to make much of this information available in hopes of gathering many independent devolpers to extend and improve their product. In the case of an illegal monopolist, there is no gain to be had by sharing this information Thus, this is an important part of the solution, and its details need to be as strong as possible. It has been reported that the law allows for such punitive measures to be applied, even in the sometimes murky area of intellectual property, patents, and copyright, when a crime has been committed, as it has in this case.

Thank you for your attention.

Richard Gran

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